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ANALYSIS OF CERTAIN ASPECTS OF THE CALIFORNIA-ARIZONA NAVEL ORA--ETC(U)
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BY THE U.S. GENERAL ACCOUNTING OFFICE
**Report To The Honorable George Miller,
House Of Representatives.**

Analysis Of Certain Aspects Of The California-Arizona Navel Orange Marketing Order .

Marketing of California-Arizona navel oranges is controlled by a Federal marketing order initiated by an industry committee and approved and administered by the Department of Agriculture. Of the 1980-81 record-breaking crop, about 57 percent is expected to reach the fresh domestic market. The remainder will be exported or processed into juice or cattle feed.

Among other things, GAO found that:

- The committee's composition, which only assures adequate consideration of industry interests, is consistent with Federal regulations and does not violate Federal conflict-of-interest laws.
- No evidence exists that 1980-81 navel oranges have been destroyed.
- Terminating the marketing order would probably lower prices in the short run, but long-range implications are unknown.

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

B-203812

The Honorable George Miller
House of Representatives

Dear Mr. Miller:

Subject: Analysis of Certain Aspects of the
California-Arizona Navel Orange
Marketing Order (CED-81-129)

Based on your March 20, 1981, request and subsequent discussions with your office, we reviewed certain aspects of the California-Arizona navel orange marketing order. In addition to responding to your specific questions, this report provides background information on marketing orders in general and more specifically on the navel orange marketing order.

In summary, we found that:

- The committee composition, which is established in Federal regulations, only assures adequate consideration of navel orange industry interests because it consists primarily of industry members.
- About 83,000 tons of oranges were sold as cattle feed this year. We found no evidence that fruit was dumped or otherwise destroyed.
- 1980-81 orange prices may have been lower without the marketing order, but the long-range implications of marketing order termination are unknown.
- Many of the oranges fed to cattle came from groves receiving Federal water. However, it would be very difficult if not impossible to determine exactly how much.
- The composition of the marketing order committee does not violate Federal conflict-of-interest laws.
- The Navel Orange Administrative Committee does not have the authority to advertise oranges generically, but growers who favor generic advertising are seeking ways of doing this outside the committee.
- Handlers who have spoken out against the marketing order have not been audited more frequently than others.

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--Two growers have received extra compensation for serving on the committee, but this practice has ceased because the U.S. Department of Agriculture said it was unacceptable and would result in removal from the committee.

These matters are discussed in the appendix.

We also discuss certain issues and views that the Congress should be aware of if it considers a change in the committee's composition or operations. Our discussion includes many views on what is in the public interest, information on the complexity of the industry, and the need for criteria to decide whatever the Congress finds to be in the public interest.

We made our review at the Department of Agriculture's headquarters in Washington, D.C., and at various locations in central and southern California. We reviewed laws, regulations, documents, and data pertaining to marketing orders and interviewed Federal officials, industry members, consumers, and members of the Navel Orange Administrative Committee. We did not analyze the advantages or disadvantages of the navel orange marketing order, whether it is being properly administered, or whether it should or should not be continued. Because of the short time for completing our review, we relied extensively on statistical information provided by the Navel Orange Administrative Committee and on the oral comments of a nonrandom sample of navel orange industry members. Nevertheless, we talked with industry people with diverse views, including those in favor and those opposed to how the current navel orange marketing order is being administered.

Our consultant, Dr. Ronald Knutson, a professor at Texas A&M University, assisted in updating a study he made in 1977 on consumer involvement on marketing orders. His study is being sent to you under separate cover.

An administrative hearing, a public hearing before a Department of Agriculture administrative law judge, is scheduled to begin on July 20, 1981, in Exeter, California. The purpose of this hearing is to seek views from all concerned on the marketing of the 1980-81 navel orange crop so that a determination can be made as to whether the marketing order regulations have imposed undue burdens and costs. This hearing may include discussions on some of the issues discussed in this report.

At your request we did not take the additional time to obtain agency comments on matters discussed in this report.

B-203812

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 8 days from its issue date. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script, reading "Henry Eschwege". The signature is written in dark ink and is positioned above the typed name and title.

Henry Eschwege
Director

C o n t e n t s

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ABBREVIATIONS

AMS	Agricultural Marketing Service
CCM	California Citrus Mutual
FOB	free on board
GAO	General Accounting Office
NOAC	Navel Orange Administrative Committee
USDA	U.S. Department of Agriculture

ANALYSIS OF CERTAIN ASPECTS OF THECALIFORNIA-ARIZONA NAVEL ORANGE MARKETING ORDERORIGIN, OBJECTIVES, AND OPERATION
OF MARKETING ORDERS

In the 1930's the Congress enacted legislation to help relieve depressed agricultural conditions. The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601), an outgrowth of the Agricultural Adjustment Act of 1933, authorizes the Secretary of Agriculture to establish Federal marketing orders 1/ to regulate the handling and marketing of domestically produced fresh vegetables, fresh and dried fruits, and nuts. The act's principal objectives are to:

- Establish and maintain orderly marketing conditions, enabling producers to obtain parity prices for their commodities.
- Protect consumer interests by authorizing no marketing order actions which would maintain prices to growers above parity.
- Establish and maintain orderly marketing conditions to provide for a more orderly flow of a commodity, thus creating greater stability in supplies and prices.

Industry initiates marketing orders

Under the law, industry groups, called committees or boards, recommend to the Secretary of Agriculture those controls they deem necessary to maintain orderly marketing conditions. When the Secretary approves the marketing order, it becomes part of the Code of Federal Regulations and has the force and effect of law. As of June 22, 1981, 47 marketing orders were in effect.

These orders specify the size, composition, and functions of the marketing order committees. The committees essentially consist of growers, or growers and handlers, of the regulated commodity. Committee members are nominated by the industry and must be approved by the Secretary. Each committee is given the authority through the Secretary to implement the order's provisions, propose regulations to effect those provisions, and recommend amendments to the Secretary. The committee must investigate and report violations to the Secretary and may employ the staff necessary to administer its marketing order.

1/Marketing orders are enabling documents which provide the authority for regulating the handling of agriculture commodities.

Marketing orders are binding on all handlers who market the regulated commodity. The Agricultural Marketing Agreement Act specifically exempts the making of marketing agreements 1/ from the provisions of antitrust laws. The U.S. Supreme Court has held that marketing orders do not violate antitrust laws provided that they are consistent with the provisions of the act. 2/

The Fruit and Vegetable Division of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), is responsible for overseeing the fruit and vegetable marketing orders.

California-Arizona navel
orange marketing order

The marketing order for California-Arizona navel oranges became effective in 1953. 3/ It has since been in effect for each growing season. The growing season generally runs from November to June.

The Navel Orange Administrative Committee (NOAC), as established in 7 CFR 907.20, and its membership, established in 7 CFR 907.22, administers the marketing order by recommending to the Secretary of Agriculture seasonal and weekly shipment goals for the fruit. At the beginning of the season, NOAC evaluates the expected supply and demand for navel oranges and makes its recommendations to the Secretary. The Secretary then fixes the quantities and/or sizes of fresh oranges to be handled domestically if he determines that the NOAC recommendations would further the Agricultural Marketing Agreement Act's purpose.

NOAC then meets weekly during the navel orange growing season to review changes in market conditions. Based on these meetings, which are attended by USDA representatives, NOAC recommends to the Secretary the volume of fresh domestic oranges for the following week. These recommendations are analyzed by AMS' Fruit and

1/Marketing agreements are voluntary contracts between handlers and the Secretary and are binding only on handlers who sign the agreements. When both marketing orders and agreements are in effect, their regulatory terms are identical.

2/United States v. Rock Royal Cooperative, Inc., 307 U.S. 533 (1939).

3/Although navel oranges have been under various marketing orders since 1936 with the exception of the 1952-53 growing season, these orders were not specifically for navel oranges but included other citrus fruits, such as valencia oranges and grapefruit.

Vegetable Division before being submitted to the Secretary. Virtually all NOAC recommendations have been approved by the Secretary.

For the 1980-81 growing season, NOAC estimated an on-tree navel orange crop of 76,700 carloads (each carload represents 1,000, 37.5-lb. cartons) and recommended that 43,500 carloads, or 57 percent, be shipped to the fresh domestic market. Because this season's crop contained an abnormally large percentage of small-size oranges, NOAC recommended that all oranges smaller than size 138 (tennis ball size) be eliminated from the fresh domestic market. The Secretary concurred in the recommendations. As of May 28, 1981, 71,699 carloads of navel oranges had been picked from the 1980-81 crop. Of this amount, 40,278 carloads had gone to the fresh domestic market, 6,139 carloads to the export market, 23,833 carloads had gone to the byproduct market, and 1,449 carloads had gone for other uses. Of the oranges that went to the byproduct market, 19,415 carloads had been processed into juice and 4,418 carloads had been processed into cattle feed.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objective was to provide information on the California-Arizona navel orange marketing order in response to Representative George Miller's specific questions. His primary concern was whether the composition of the California-Arizona NOAC assures adequate consideration of the overall public interest. Also, the use of navel oranges as cattle feed has led to allegations that oranges have been dumped and otherwise destroyed to enhance the navel orange price. In addition, some growers have expressed concern about not being able to sell all of their navel oranges in the fresh domestic market because of restrictions imposed by the marketing order.

We made our review at USDA headquarters in Washington, D.C., and in various locations in central and southern California. We interviewed Federal officials (including officials of USDA and of the Department of the Interior's Bureau of Reclamation), navel orange industry members, consumers, members of NOAC, and NOAC's manager. We also attended an NOAC weekly meeting. We reviewed and analyzed documents and data pertaining to the navel orange marketing order, including minutes of NOAC weekly meetings, marketing policy and impact statements, weekly navel orange shipment and utilization records, and historical price and grower return trends. We reviewed laws and regulations pertaining to marketing orders generally and navel oranges specifically. We visited orange groves, orange processing facilities, and cattle feeding operations. We also met with retail food establishment representatives.

We did not analyze the advantages or disadvantages of the navel orange marketing order, whether it is being properly administered, or whether it should or should not be continued. Because of the short time for completing our review, we relied

extensively on statistical information provided by NOAC. Time limitations also prevented us from getting views on public participation on NOAC from a random sample of members of the navel orange industry and consumer population. Nevertheless, we talked with industry people with diverse views, including those in favor and those opposed to how the current navel orange marketing order is being administered.

Our responses to Representative Miller's specific questions follow.

COMMITTEE COMPOSITION DOES NOT
NECESSARILY PROVIDE ADEQUATE
CONSIDERATION OF PUBLIC INTEREST

Does the composition of the California-Arizona Navel Orange Marketing Order Administrative Committee assure adequate consideration of the overall public interest and, if not, should the composition of the committee be changed?

The overall public interest is served when the interests of various groups, including consumers and members of the navel orange industry (growers and handlers), receive adequate consideration during the marketing order process. The current committee's composition can only assure adequate consideration of navel orange industry interests because NOAC consists primarily of industry members. However, this is not inconsistent with the law, which was designed primarily to help growers. Under this law, consumer interests are to be protected by limiting prices to parity--a limit that is not an appropriate measure of protecting consumer interests.

Below we discuss certain issues and views that the Congress should be aware of if it considers a change in the committee's composition or operations. These include the many views on what is in the public interest, information on the complexity of the industry, and the need for criteria to measure whatever the Congress finds to be in the public interest.

Committee composed primarily of
navel orange industry members

The 11-member NOAC does not provide a voice to the public. Ten members are industry people. The single nonindustry member is nominated by the industry members, not by consumers. Further, the nonindustry member has chosen not to exercise his voting authority, but rather to serve as a nonaligned chairman.

The industry members consist of three groups, represented in proportion to the volume of fruit they handle. The groups

include the largest cooperative (Sunkist), other cooperatives (primarily Pure Gold), and independents.

In addition to representing these groups, industry members represent either the grower or handler sector. Handlers may include packinghouse operators or employees of a cooperative. Also, each grower on the committee has two alternates and each handler has one alternate.

Sunkist, which handles about half of the navel orange crop, holds five seats on the committee. Three of the members are growers affiliated with Sunkist and two are Sunkist employees.

The other cooperatives, which handle about 20 percent of the navel orange crop, have two representatives on the committee, a grower and a handler. The independents, with 30 percent of the crop, have three members on the committee--two growers and one handler.

The nonindustry member is more a member of the agricultural community than of the general public. Although the nonindustry member was selected by the Secretary of Agriculture, he was nominated for this position by the committee's industry members. Although he was never involved in the citrus industry as a grower or handler, he is a former Los Angeles County farm advisor with the University of California Agricultural Extension Service. He serves as committee chairman but has chosen not to vote because he believes this would impair his effectiveness in chairing and mediating industry interests. The single vote that the public might have had is therefore lost. The current nonindustry representative has served on the committee for over 25 years.

Parity not an appropriate measure
for protecting consumer interests

The committee composition described above is consistent with the law enacted by the Congress out of concern for the farmer. Under this law, the Secretary of Agriculture is responsible for assuring that the committee's actions are in the consumer interest.

In a 1976 report on marketing orders, ^{1/} we questioned whether the law provided the Secretary with an appropriate tool for protecting the consumer interest. The law establishes a parity price goal partly to protect consumers. A parity price is intended to give a unit of a farm commodity the same purchasing power as it held in the period 1910-14, the "golden age of

^{1/}"Marketing Order Program--An Assessment of Its Effects on Selected Commodities" (ID-76-26, Apr. 23, 1976).

agriculture." However, the parity price concept disregards some basic economic considerations, such as increases in productivity. Consequently, in our opinion, it provides little or no consumer protection.

Most growers not participating
in committee nominations

The Sunkist, other cooperative, and independent growers may not be participating in committee nominations as fully as they could.

The ordinary Sunkist grower is far removed from the committee nominating process. One committee representative, a Sunkist vice president, told us that Sunkist committee members generally serve as long as they want. When committee vacancies occur, directors of the 11 Sunkist local branches (district exchanges) recommend prospective candidates for NOAC. The Sunkist board of directors nominates from this list of candidates. Every 2 years, the board asks the district exchanges if they want the same representatives, but the district exchanges rarely propose any change. Of the current Sunkist representatives, three have been on the committee about 10 years, as either Sunkist members or alternates. One has served about 4 years, but previously served as an independent committee member for about 10 years. The fifth representative has only served about 2 years, but he replaced someone who had served 25 years.

Pure Gold also relies on its board members to seek new nominees to NOAC every 2 years. It does not advertise openings to all growers but rather seeks out growers who are "willing to serve." Of the current Pure Gold representatives, one has served 3 years and the other over 10 years.

Although the independent growers have the opportunity to nominate their representatives directly, many are not participating in the nominations. Independent representatives are selected at biennial nominating meetings scheduled by USDA in various locations. Notices of the meetings are sent to all growers and press releases are printed in the local media. The last nominating meeting was in June 1980, and USDA mailed the notices to about 700 independent growers 2 weeks before the meeting. The press release went to the media 2 days before the meeting. However, only 38 growers attended the nominating meeting. Participants decide themselves what voting method to use. Last June a slate of candidates, as well as a few individuals, were nominated for both member and alternate positions. Voting for the members was by hand; voting for the alternates was by secret ballot. The slate won. Of the current independent representatives, all three have served on the committee as either members or alternates for over 10 years.

Views differ as to what committee
composition would best serve the
public interest

Various groups have interpreted "public interest" differently in arguing about how NOAC should operate.

Some consumer advocates suggest that the overall public interest would be best served by allowing the consumer to have access to all navel oranges that are grown. They believe that the marketing order keeps prices high for wealthy farmers and that consumer representation on NOAC would mean more and cheaper oranges for the consumer.

One consumer member of a Federal marketing order committee, on the other hand, believes that Federal marketing orders protect the consumer interests. She defined consumer interest as "a plentiful supply of safe food at stable and reasonable prices providing a fair return to the grower," particularly for small farmers. She favored limiting the number of consumers on the marketing order committee to one member. She was adamant that this representative should actively participate and vote.

Many industry people believe that the committee serves the public interest by (1) maintaining a constant flow of fruit to market and making fruit available to consumers for the longest possible time, (2) keeping the price of fruit stable, and (3) maintaining the long-term stability of the market, thus protecting against possible drastic changes in orange production capacity. These people see NOAC's primary role as maximizing growers' income, and they are skeptical of consumer representation on NOAC. In speaking of these people, one NOAC member warned that industry people may resent anyone having an impact on decisions that would affect the economic well-being of growers if that person did not personally have a financial interest at stake. Further, he said that people with no citrus background would have their credibility challenged.

Other industry people believe a freer market would better serve the public interest. Most of these people that we talked with believed that they could sell more fruit and make more money without volume control because they thought they produced high quality fruit or had some other competitive advantage. These people were generally in favor of consumer representatives on NOAC, possibly as a means of obtaining more influence over committee operations. They believed that consumers on the committee could (1) provide information about consumer needs, (2) bring economic, business, and marketing skills, and (3) balance the committee's voting structure, breaking ties and protecting against the possible dominance of any one group.

Despite this latter group's support for consumer representation on NOAC, they did not believe that "consumer advocates" should be selected. Several suggested that skilled business people would be good candidates. One suggested a representative of the retail industry--someone who observes consumer buying habits firsthand. Most asserted that the representatives should not be connected with the citrus industry. All the industry people in this group saw the selection of good consumer representatives as very difficult given the diversity of the consumer population.

Industry is not homogeneous

One of the major reasons for the diversity in views expressed by industry members is the diversity of the navel orange industry members themselves. In addition to being growers or handlers (or both growers and handlers), industry members may be family operators or corporations, small or large. Some may depend on citrus crops for their primary income; others depend on other crops or on other industries, such as oil production. Some are growers who live on and work their own land. Others are investors who live in the city and hire managers to work their land. Some may suffer badly from an unprofitable operation; others may easily bear a loss as a shelter from income taxes. The Congress' understanding of this industry makeup would be useful in evaluating the full ramifications of a change in the committee structure.

Operating criteria needed if committee composition is changed

Because of the diverse views expressed by those we interviewed and the complexity of the industry makeup, criteria are needed to measure the adherence to whatever goals or committee composition the Congress finds to be in the public interest. The presence of certain group representatives will not in itself assure that the interest group will have its views meaningfully represented. If, for example, the Congress finds it in the public interest to protect both growers and consumers, the criterion would be: limit prices to a level that is equitable relative to the cost of production. Similarly, if the Congress finds it in the public interest to protect family farms, the criterion would be: give priority consideration to owner/occupant family farmers over investors.

MARKETING ORDER TERMINATION--PRICES DOWN AT FIRST, BUT LONG-RANGE IMPLICATIONS UNKNOWN

What impact has the navel orange marketing order had on the price of these oranges in the fresh domestic market during the 1980-81 season?

We are unable to estimate the marketing order's impact on the price of 1980-81 oranges. However, through the authority

provided by the marketing order, NOAC limits the shipment of oranges to the fresh market for the expressed purpose of maximizing grower income. This would indicate that the price of navel oranges would have been lower had the marketing order been terminated for the 1980-81 navel orange season. The immediate impact of terminating the marketing order, however, might be quite different than the long-range implications.

Committee limits shipment
to enhance price

NOAC's manager said that the committee's primary objective is maximizing grower revenue. To accomplish this objective, the committee estimates the "best" economic use of the year's crop among the fresh domestic, byproducts, and fresh export markets. From this estimate, the committee establishes a preliminary schedule of weekly fresh domestic shipments for the entire season.

At its weekly meeting, NOAC reviews the preliminary schedule. The schedule for the upcoming week, as revised during this meeting, then becomes the industry quota or limit. This weekly limit is allocated among the handlers based on the amount of oranges each handler controls. This allocation is called "prorate"--the handler's "fair share" of the fresh domestic sales.

Prorate limits the amount of oranges that a particular handler can ship to the fresh market during the week. Handlers may ship up to 20 percent more than their prorate in any given week, but must compensate by decreasing future shipments.

Long-range impact on price may be different
than the short-range impact

Estimating the long-range implications of terminating the marketing order may be more difficult than estimating the short-range impact. First, historical supply and demand data necessary to estimate price is based entirely on the market as restricted by the marketing order. Also, many people believe that the industry's ownership structure would change if the order was terminated. The impact of this ownership change and other variables on long-range prices is unknown.

A USDA study to be released in July on the navel and valencia orange marketing orders tentatively concludes that, in the long run, fresh market orange supplies and prices would remain about the same as before order termination but the Western juice processing industry would be virtually eliminated. This would result from a significant cutback in the acreage used for navel orange production. The study predicts the short-run effect of order termination would be higher weekly fresh shipments, lower fresh prices, reduced juice processing, and diminished grower revenue.

Prices of navel oranges appear reasonable

Despite claims that NOAC has used the marketing order to maintain high orange prices in a record-breaking crop year, data on the "FOB 1/ price" (price paid to handlers, excluding freight charges) and the "on-tree price" (price paid to growers after handlers deduct for picking, packing, hauling, and selling) suggests that prices may not be unreasonable. This year's navel orange crop is expected to exceed last year's record breaker by about 12 percent. As of the end of May, the average FOB price for this season was \$5.08 per carton, or \$0.14 (3 percent) higher than the year before when the price was \$4.94. In making this comparison, however, one must consider that in constant 1967 dollars, 2/ last year's price was the lowest price in several years--about 20 percent below the constant dollar price for the previous 5 years. Also, last year's on-tree price was below what USDA cost estimates would indicate growers need to make a profit. In fact, the FOB and on-tree prices of navel oranges for the past 10 years suggest a slight downward trend, as shown in the following table.

Per Carton FOB and On-Tree Prices
of Navel Oranges

<u>Season</u>	<u>FOB price</u>	<u>On-tree price</u>
	(Constant 1967 dollars)	
1971-72	\$2.47	\$1.20
1972-73	2.70	1.61
1973-74	2.47	1.30
1974-75	2.27	1.14
1975-76	2.03	0.89
1976-77	2.09	0.99
1977-78	2.78	1.66
1978-79	3.18	1.85
1979-80	1.99	0.88
1980-81	<u>a/</u> 1.92	(b)

a/Price as of May 28, 1981.

b/Not available.

1/Free on board.

2/Consumer Price Index with 100 representing the base year of 1967.

ECONOMIC OPPORTUNITY DETERMINES
WHETHER FRUIT IS SOLD FRESH OR
PROCESSED AS JUICE OR CATTLE FEED

During this navel orange season, what amount of fruit was withheld from the fresh market and either destroyed or fed to cattle?

We found no evidence that good fruit was being dumped or otherwise destroyed. However, according to NOAC, 82,800 tons of navel oranges have been processed as cattle feed through May 1981. Whether oranges are marketed through the fresh market or processed for orange juice or cattle feed is largely a result of which market provides the best economic opportunity. NOAC's policy of limiting weekly shipments results in the loss of some good fruit through spoilage or overripening, but it also stretches the navel orange marketing season.

82,800 tons of oranges
processed as cattle feed

Whether oranges are shipped to the fresh market or processed as byproducts, including juice and cattle feed, is largely the result of economics. Growers generally pay handlers to pick, pack, haul, and sell their oranges. Packinghouses charge growers for oranges picked plus an additional amount for oranges packed for the fresh market. The better quality oranges go to the fresh market. The poorer quality fruit is processed as byproducts. Some of this fruit may be good tasting but of small size or inferior appearance and may not demand enough price on the fresh market to pay for the packing.

Whether byproduct fruit is processed for its juice or fed to cattle depends largely on its value in the juice market. Before the fruit is squeezed for juice, the price of juice concentrate must exceed the processing cost. If it does not, the fruit is sold as cattle feed to avoid a total loss.

NOAC collected (for the first time this year) data from handlers on byproduct fruit sold as cattle feed. This data showed that cattle feed processing totaled 4,418 rail carloads (4.418 million 37.5-lb. cartons, or 82,800 tons) as of the end of May.

Portion of Byproduct Oranges Fed to Cattle

<u>Month</u>	<u>Total byproduct oranges (note a)</u>	<u>Oranges for cattle feed</u>	<u>Percent of byproducts for cattle feed</u>
	(rail carloads)		
Nov.	988	2	(b)
Dec.	1,600	87	5
Jan.	1,781	1,134	64
Feb.	2,802	1,404	50
Mar.	4,322	695	16
Apr.	6,540	967	15
May	4,137	129	3

a/These figures are based on weekly NOAC reports and do not include subsequent revisions; therefore, the monthly amounts will not total to the year-to-date information shown on p. 3 of this appendix.

b/Less than 1 percent.

According to navel orange industry members, the large crop of small oranges and their late maturity contributed to a higher than normal amount of fruit processed as cattle feed. (Livestock feed operators said they have been buying some navel oranges for the past 5 years.) Early in the year the oranges were not very sweet and therefore had low value for juicing. However, not much byproduct fruit was sold as cattle feed until January. At this point, the industry anticipated a low price for its juice. In many cases, processing oranges for juice would have resulted in a loss. Therefore, large amounts of oranges were sold as cattle feed. After February, the amounts sold as cattle feed dropped. This change occurred because as the fruit matured, it became sweeter and was worth more in the juice market. Also, the value of juice concentrate increased after the Florida freeze damaged that State's juice crop. The fruit was sold as cattle feed after February, primarily because the juice processing plants were overloaded.

For central California orange growers (particularly Sunkist growers), transportation cost was a significant factor in deciding whether to process byproduct oranges as juice or to dispose of them as cattle feed. Sunkist's California juicing plants are located in southern California about 200 miles from the central California growers. A Sunkist representative told us that hauling oranges from central California to the southern California plants costs about \$16 a ton. This expense, along with normal juice processing costs, must be covered by the revenue that would be derived from the juice before Sunkist would process central California oranges for juice. For a while this year, Sunkist had so much fruit that could not profitably be juiced that Sunkist paid shippers to haul it away. One shipper said that Sunkist paid him \$1 a ton to take the fruit away. He then sold the oranges as cattle feed.

According to growers, handlers, and cattle feedlot operators, oranges that were fed to cattle were primarily undersized or of a quality unacceptable to the fresh market. In visiting three feedlots, we found this to be the case. However, we visited the sites toward the end of the season; therefore, we cannot attest to the quality of the fruit fed to cattle earlier in the season.

Limiting weekly shipments results in the loss of fruit but stretches the marketing season

One of the navel orange marketing order's primary objectives is the orderly flow of fruit to the fresh market. NOAC works toward this objective by limiting the industry's weekly fresh market shipments. Such limitation stretches the navel orange season but causes the quality of some of the fruit left on the trees to fall, making much of it more suitable for byproducts than for the fresh market.

The California navel orange matures in November or December. Although the fruit can be "stored" on the tree from 2 to 5 months, the quality of the fruit deteriorates. Harvested navel oranges, however, do not store well.

We obtained data on the portion of navel oranges shipped to the fresh market and the portion used for juice, cattle feed, and other purposes for this season and the previous two seasons. The data, which is shown in the following table, shows a dramatic increase in the amount of fruit processed as a season progresses.

Portion of Navel Oranges Processed as Byproducts

Month	Season				Average amount processed (1,000 tons)
	1978-79	1979-80	1980-81	Average	
	----- (percent) -----				
Nov.	8	14	25	16	12
Dec.	19	16	24	20	26
Jan.	34	22	24	27	40
Feb.	35	31	31	32	55
Mar.	37	38	37	37	79
Apr.	38	45	42	42	96
May	36	51	42	43	70
June	67	72	(a)	70	9

a/Not available.

Much of the increase in the portion of fruit processed as byproducts as the season progresses is due to the drop in fruit quality as it ages on the tree. In a good year, about 80 to

90 percent of the orange crop would be fresh market quality if it were not stored on the tree. However, this portion may vary from year to year. For example, some of the 1978-79 California navel orange crop was damaged by freezing weather in December 1978 and January 1979, making some of this crop undesirable for the fresh market. This probably explains the higher percentage of processed fruit during January (34 percent compared with 22 and 24 percent in the other seasons). Also, the unusually high portion processed as byproducts in November and December of this season (1980-81) might be because much of the fruit was smaller this year than in previous years.

GREAT LIKELIHOOD THAT ORANGES FED TO CATTLE
WERE GROWN ON FEDERALLY IRRIGATED LAND

What is the geographic origin of the fruit being destroyed and do the farms involved contract for Federal and State irrigation?

As stated earlier, we did not find oranges destroyed. However, due to the way oranges are packed, it would be very difficult, if not impossible, to determine how much of the fruit sold as cattle feed came from farms using Federal or State water. However, Federal irrigation projects, mainly the Central Valley Project, serve the area where most of the cattle feed oranges were grown. Due to time limitations, we did not attempt to identify the farms on which cattle feed oranges were grown or those farms that used Federal or State water.

Determining the geographic origin of the oranges used for cattle feed is nearly impossible because byproduct oranges lose their grower identity after they have been separated from the fresh market fruit. Orange growers send their fruit to packing-houses where it is graded and sized. The byproduct oranges are commingled with other growers' oranges. These commingled oranges are then processed as juice or sold as cattle feed. Some packing-houses serve as many as 157 different growers. Therefore, it is nearly impossible to determine which navel orange came from which grower and, consequently, which grove.

However, according to Bureau of Reclamation officials, many of the oranges which were eventually sold as cattle feed came from groves irrigated with Federal water. The Central Valley Project, the largest Federal irrigation project in central California, supplies irrigation water to over 2 million acres of land in central California where about 90 percent of the California-Arizona navel oranges are grown. About 72,000 of the 83,000 tons of 1980-81 oranges used as cattle feed came from this area.

Many of the 72,000 tons probably came from farms served by the Central Valley Project. The acreage and volume of navel oranges grown with Central Valley Project water is not readily

available because the Bureau of Reclamation combines data on valencia oranges and tangerines with data on navel oranges. During 1978, 80,110 acres of oranges (navel and valencia) and tangerines were reported as having been irrigated by the Central Valley Project. These acres yielded almost 650,000 tons of fruit. For the 1978-79 growing season, NOAC reported about 87,000 acres of navel oranges harvested in central California, yielding about 747,000 tons. Therefore, it is logical to conclude that many of the cattle feed oranges came from groves which received irrigation water from the Central Valley Project.

NO CONFLICT OF INTEREST EVIDENT

Has there ever been litigation concerning the lawfulness of the Congress delegating the regulation of supply and price to people with a proprietary interest? Is there any general Federal requirement designed to avoid such conflicts of interest which is being inadequately applied? Should there be a regulation?

We are not aware of any court cases which directly address the question of whether the Congress may delegate the regulation of a commodity's supply or price to people who have a direct financial interest in it. Such cases, in any event, would not be relevant because the Secretary of Agriculture, not NOAC, approves the supply figures and marketable sizes of navel oranges. The navel orange marketing order which governs the marketing of navel oranges and establishes NOAC (codified at 7 CFR 907 (1980)) expressly provides that NOAC act in an advisory capacity with respect to regulating the size and supply of navel oranges in the marketplace. The marketing order's language indicates that the Secretary is not bound to follow NOAC's recommendations. However, the Secretary follows the recommendations only if to do so "would tend to effectuate the declared policy of the act." Accordingly, it cannot be said that the Congress delegated market regulation to NOAC.

Concerning whether there is any general Federal requirement designed to control conflict of interest which is being inadequately applied, NOAC members do not violate Federal conflict-of-interest laws and administrative rules because they act in a representative capacity and not as Government employees covered by the applicable laws and rules.

In determining whether NOAC members act in a representative capacity and not as Government employees, we reviewed chapter 735 of the Federal Personnel Manual, which sets forth the restrictions against conflict of interest by full- and part-time Government employees. The rationale underlying the prohibitions against conflict of interest is that the employees should not advance their own interests at the expense of the public welfare because

they are hired and compensated by the U.S. Government to act on its behalf. On the other hand, advisory committee members, temporarily engaged by the Government to present the committee's views as representatives of their industry, do not fall within the scope of Federal conflict-of-interest rules.

NOAC members are not hired to act in behalf of the interests of the United States as a whole. Rather, the Government engages them expressly to advise the Secretary of Agriculture of the industry's viewpoint to help the Secretary fulfill a major purpose of the Agricultural Marketing Agreement Act of 1937 of protecting the Nation's agricultural community. Therefore, we believe that because they are acting in a representative capacity, they are not subject to Federal conflict-of-interest rules.

NOAC NOW CANNOT AUTHORIZE GENERIC ADVERTISING,
BUT MANY GROWERS WANT IT

Does authority presently exist to advertise navel oranges on a generic basis and does the committee have authority to assess fees for this purpose?

NOAC does not have the authority to conduct a nationwide generic advertising program or to assess fees for this purpose. Even though many growers favor generic advertising, opposition by Sunkist management on how it would be implemented and a lack of responsiveness by NOAC make generic advertising by NOAC unlikely. As a result, proponents of generic advertising are seeking the formation of a separate industry-run, State-backed commission to meet their goal.

The Agricultural Marketing Agreement Act of 1937 allows administrative committees to authorize advertising in their marketing orders. However, the originators of the navel orange marketing order did not choose to include this authorization.

Nevertheless, it appears that many growers, including some of those of Sunkist, favor generic advertising. In 1978 the California Citrus Mutual (CCM), a 900-member association of growers (70 percent of which are associated with Sunkist) which is leading a movement for generic advertising, conducted a member survey on this issue. The survey revealed that about 70 percent of CCM's members thought generic advertising and promotion may be a beneficial way to increase demand for fresh oranges. In 1979 another member survey showed that 88 percent felt California should advertise the oranges generically. In addition, all the growers we interviewed favored generic advertising. Several cited the example of generic advertising for apples or table grapes. According to CCM 1980 statistics, since generic advertising began in 1971, sales of Washington apples increased to \$452 million from \$123 million and per capita consumption rose to 8.1

pounds from 4.9 pounds. California table grape sales had gone up to \$330 million from \$96 million and per capita consumption had risen to 3.7 pounds from 2.2 pounds since generic advertising for table grapes was introduced in 1972.

Despite the growers' support for generic advertising, Arizona growers and Sunkist management oppose the program. An amendment to the marketing order would affect Arizona as well as California growers, but Arizona oranges could not legally be marketed as California grown. Arizona growers do not want to pay to advertise California oranges.

Sunkist is opposed to generic advertising because it already spends millions of dollars each year promoting its Sunkist brand. Implementing generic advertising would impose further assessments on its members who already pay for Sunkist brand advertising. Sunkist management said that it would only support generic advertising if Sunkist received a full rebate for its advertising. Further, Sunkist management said that navel oranges do not fit the profile for generic advertising, which works best with new or little-known commodities.

Nevertheless, proponents of generic advertising, led by CCM, sought NOAC's support for generic advertising. Knowing that the marketing order did not authorize advertising, CCM wanted the committee to study the merits and feasibility of generic advertising. They chose this alternative over petitioning the Secretary of Agriculture to amend the order through a grower referendum. A grower referendum to amend the order would have had to address any issues raised by the growers, in addition to generic advertising. CCM felt that a referendum would be divisive to the industry, whereas working through the committee, which represented a wide range of industry interests, seemed more constructive.

In January 1979 CCM first proposed that the committee make a feasibility analysis on generic advertising. In October 1979 after numerous discussions both with NOAC members and members of Sunkist's management and board of directors, a subcommittee was set up to study the matter. The group was scheduled to report back to NOAC within 6 months but has not yet made the study.

As a result of NOAC's inaction, CCM has moved to form a separate, industry-run, State-backed commission to promote and advertise California navel oranges generically. In March 1981 a bill was introduced in the California State Legislature requesting creation of such a commission. If the bill becomes law, the commission would not be able to assess growers for generic advertising without approval of the growers.

Sunkist management opposes the bill for the same reasons that it opposes generic advertising by NOAC. Also, Sunkist argues that

the addition of another organization to supervise the generic advertising would impose an "extra layer of bureaucracy."

Because of Sunkist's opposition to the bill, CCM is now proposing the creation of a State marketing order committee under existing California law. This committee would administer market research and testing of generic advertising during the 1982-83 and 1983-84 seasons. Under California law, such a marketing order must be approved by the growers.

MARKETING ORDER CRITICS NOT
SINGLED OUT FOR AUDIT

Has the committee audited handlers because they have spoken out against the marketing order?

Although the committee decided to increase the number and intensity of audits this year, we found no evidence that handlers who have spoken out against the marketing order are being audited more than others. The NOAC auditors said they have audited 100 percent of handlers for the 1979-80 season. Previously, they reached most of the handlers approximately every other year. They are also sampling a greater percentage of all transactions this year and looking at each in more detail. In intensifying the audits, they are trying to make sure that handlers are, among other things, reporting everything they have shipped.

SOME COMMITTEE MEMBERS RECEIVED
EXTRA COMPENSATION, BUT THIS
PRACTICE APPEARS TO HAVE CEASED

Have committee members solicited producers and handlers for money as additional compensation for serving on the committee?

At least two committee members received compensation above the normal \$25 per meeting for serving on NOAC. However, they viewed the money not as an improper payment for special favors, but as compensation for the time lost from the normal duties of growing or packing oranges.

One committee member, a representative of the independent growers, openly discussed this matter with the committee, saying that he received about \$3,400. He stopped taking money when, in a July 18, 1980, letter, the Director of AMS' Fruit and Vegetable Division said that the taking of additional compensation above the amount that is authorized by the marketing order is unacceptable and that the soliciting or acceptance of additional compensation from sources outside the marketing order would be a basis for removal from NOAC.

APPENDIX I

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Another member, an alternate Sunkist grower representative, received money from the cooperative's district office in his home area. He told us that he was receiving \$75 compensation from his district office for each time he attended a NOAC meeting--about once a month since 1977. However, this practice ceased about a year ago, when he found out it was not permitted under the marketing order.

END

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